

IC 25-1-7

Chapter 7. Investigation and Prosecution of Complaints Concerning Regulated Occupations

IC 25-1-7-1

Definitions

Sec. 1. As used in this chapter:

"Board" means the appropriate agency listed in the definition of regulated occupation in this section.

"Director" refers to the director of the division of consumer protection.

"Division" refers to the division of consumer protection, office of the attorney general.

"Licensee" means a person who is:

- (1) licensed, certified, or registered by a board listed in this section; and
- (2) the subject of a complaint filed with the division.

"Person" means an individual, a partnership, a limited liability company, or a corporation.

"Regulated occupation" means an occupation in which a person is licensed, certified, or registered by one (1) of the following:

- (1) Indiana board of accountancy (IC 25-2.1-2-1).
- (2) Board of registration for architects and landscape architects (IC 25-4-1-2).
- (3) Indiana auctioneer commission (IC 25-6.1-2-1).
- (4) Board of chiropractic examiners (IC 25-10-1).
- (5) State board of cosmetology and barber examiners (IC 25-8-3-1).
- (6) State board of dentistry (IC 25-14-1).
- (7) State board of funeral and cemetery service (IC 25-15-9).
- (8) State board of registration for professional engineers (IC 25-31-1-3).
- (9) Indiana state board of health facility administrators (IC 25-19-1).
- (10) Medical licensing board of Indiana (IC 25-22.5-2).
- (11) Indiana state board of nursing (IC 25-23-1).
- (12) Indiana optometry board (IC 25-24).
- (13) Indiana board of pharmacy (IC 25-26).
- (14) Indiana plumbing commission (IC 25-28.5-1-3).
- (15) Board of podiatric medicine (IC 25-29-2-1).
- (16) State psychology board (IC 25-33).
- (17) Speech-language pathology and audiology board (IC 25-35.6-2).
- (18) Indiana real estate commission (IC 25-34.1-2).
- (19) Indiana board of veterinary medical examiners (IC 25-38.1).
- (20) Department of natural resources for purposes of licensing water well drillers under IC 25-39-3.
- (21) Respiratory care committee (IC 25-34.5).
- (22) Private investigator and security guard licensing board (IC

25-30-1-5.2).

(23) Occupational therapy committee (IC 25-23.5).

(24) Behavioral health and human services licensing board (IC 25-23.6).

(25) Real estate appraiser licensure and certification board (IC 25-34.1-8).

(26) State board of registration for professional surveyors (IC 25-21.5-2-1).

(27) Physician assistant committee (IC 25-27.5).

(28) Indiana athletic trainers board (IC 25-5.1-2-1).

(29) Indiana dietitians certification board (IC 25-14.5-2-1).

(30) Indiana physical therapy committee (IC 25-27).

(31) Manufactured home installer licensing board (IC 25-23.7).

(32) Home inspectors licensing board (IC 25-20.2-3-1).

(33) State department of health, for out-of-state mobile health care entities.

(34) State board of massage therapy (IC 25-21.8-2-1).

(35) Midwifery committee (IC 25-23.4-2-1).

(36) Any other occupational or professional agency created after June 30, 1981.

As added by Acts 1981, P.L.222, SEC.4. Amended by Acts 1982, P.L.113, SEC.12; P.L.137-1985, SEC.7; P.L.246-1985, SEC.15; P.L.169-1985, SEC.29; P.L.149-1987, SEC.21; P.L.257-1987, SEC.15; P.L.242-1989, SEC.6; P.L.234-1989, SEC.3; P.L.238-1989, SEC.6; P.L.1-1990, SEC.249; P.L.186-1990, SEC.5; P.L.183-1991, SEC.3; P.L.23-1991, SEC.9; P.L.48-1991, SEC.16; P.L.1-1992, SEC.130; P.L.30-1993, SEC.5; P.L.227-1993, SEC.5; P.L.213-1993, SEC.2; P.L.8-1993, SEC.371; P.L.33-1993, SEC.11; P.L.1-1994, SEC.120; P.L.124-1994, SEC.4; P.L.234-1995, SEC.3; P.L.175-1997, SEC.5; P.L.147-1997, SEC.8; P.L.84-1998, SEC.3; P.L.24-1999, SEC.4; P.L.82-2000, SEC.4; P.L.162-2002, SEC.4; P.L.145-2003, SEC.4; P.L.185-2007, SEC.4; P.L.193-2007, SEC.4; P.L.200-2007, SEC.5; P.L.3-2008, SEC.178; P.L.134-2008, SEC.16; P.L.1-2009, SEC.138; P.L.122-2009, SEC.5; P.L.160-2009, SEC.7; P.L.1-2010, SEC.102; P.L.84-2010, SEC.12; P.L.113-2010, SEC.101; P.L.42-2011, SEC.51; P.L.57-2013, SEC.28; P.L.232-2013, SEC.14.

IC 25-1-7-2

Duties of attorney general

Sec. 2. The office of the attorney general, under the conditions specified in this chapter, may receive, investigate, and prosecute complaints concerning regulated occupations.

As added by Acts 1981, P.L.222, SEC.4.

IC 25-1-7-3

Investigation of complaints

Sec. 3. (a) Except as provided in subsections (b) and (c), the division is responsible for the investigation of complaints concerning licensees.

(b) The medical licensing board of Indiana shall investigate a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8. The division shall forward a complaint concerning a physician licensed under IC 25-22.5 and a violation specified in IC 25-22.5-2-8 to the medical licensing board of Indiana for investigation by the board. However, if the complaint includes a violation in addition to a violation specified in IC 25-22.5-2-8, the division shall investigate the complaint in its entirety and notify the medical licensing board of Indiana of the investigation.

(c) The state board of cosmetology and barber examiners shall investigate complaints under IC 25-8-14-5, IC 25-8-4-13, IC 25-8-4-29, IC 25-8-9-10, IC 25-8-9-14, and IC 25-8-15.4-5. The division shall forward a complaint concerning the practice of beauty culture under IC 25-8 to the state board of cosmetology and barber examiners for investigation by the state board of cosmetology and barber examiners. However, if the complaint includes a violation in addition to a violation specified in IC 25-8-14-5, IC 25-8-4-13, IC 25-8-4-29, IC 25-8-9-10, IC 25-8-9-14, and IC 25-8-15.4-5, the division shall investigate the complaint in its entirety and notify the state board of cosmetology and barber examiners of the investigation. *As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.149-2011, SEC.1; P.L.226-2011, SEC.17; P.L.170-2013, SEC.1.*

IC 25-1-7-4

Complaints; requisites; standing

Sec. 4. All complaints must be written and signed by the complainant and initially filed with the director. Except for employees of the attorney general's office acting in their official capacity, a complaint may be filed by any person, including members of any of the boards listed in section 1 of this chapter.

As added by Acts 1981, P.L.222, SEC.4.

IC 25-1-7-5

Duties and powers of director

Sec. 5. (a) Subsection (b)(1) does not apply to:

(1) a complaint filed by:

(A) a member of any of the boards listed in section 1 of this chapter; or

(B) the Indiana professional licensing agency; or

(2) a complaint filed under IC 25-1-5-4.

(b) Except as provided in section 3(b) of this chapter, the director has the following duties and powers:

(1) The director shall make an initial determination as to the merit of each complaint. A copy of a complaint having merit shall be submitted to the board having jurisdiction over the licensee's regulated occupation, that board thereby acquiring jurisdiction over the matter except as otherwise provided in this chapter.

(2) The director shall through any reasonable means notify the

licensee of the nature and ramifications of the complaint and of the duty of the board to attempt to resolve the complaint through negotiation.

(3) The director shall report any pertinent information regarding the status of the complaint to the complainant.

(4) The director may investigate any written complaint against a licensee. The investigation shall be limited to those areas in which there appears to be a violation of statutes governing the regulated occupation.

(5) The director has the power to subpoena witnesses and to send for and compel the production of books, records, papers, and documents for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the director.

As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.22-1999, SEC.2; P.L.14-2000, SEC.55; P.L.206-2005, SEC.11; P.L.149-2011, SEC.2; P.L.226-2011, SEC.18.

IC 25-1-7-6

Statement of settlement; period to resolve

Sec. 6. (a) This section does not apply to:

(1) a complaint filed by:

(A) a member of any of the boards listed in section 1 of this chapter; or

(B) the Indiana professional licensing agency; or

(2) a complaint filed under IC 25-1-5-4.

(b) If, at any time before the director files the director's recommendations with the attorney general, the board files with the director a statement signed by the licensee and the complainant that the complaint has been resolved, the director shall not take further action. For a period of thirty (30) days after the director has notified the board and the licensee that a complaint has been filed, the division shall not conduct any investigation or take any action whatsoever, unless requested by the board. If, during the thirty (30) days, the board requests an extension of the thirty (30) day time period, the director shall grant it for a period not exceeding an additional twenty (20) days. If at any time during the thirty (30) day period or an extension thereof, the board notifies the director of its intention not to proceed further to resolve the complaint, the division may proceed immediately under this chapter. For every purpose of this section, a board may designate a board member or staff member to act on behalf of or in the name of the board.

As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.22-1999, SEC.3; P.L.206-2005, SEC.12.

IC 25-1-7-7

Disciplinary sanctions; report to attorney general; prosecution; hearing officer

Sec. 7. (a) If there has been no statement of settlement filed by the

board under section 6 of this chapter, and if, after conducting an investigation, the director believes that the licensee should be subjected to disciplinary sanctions by the board of his regulated occupation, then he shall so report to the attorney general. Upon receiving the director's report, the attorney general may prosecute the matter, on behalf of the state of Indiana, before the board. The board may designate any person as a hearing officer to hear the matter.

(b) Notwithstanding subsection (a) of this section, if the board by majority vote so requests, the attorney general shall prosecute the matter before the board, on behalf of the state of Indiana.

As added by Acts 1981, P.L.222, SEC.4.

IC 25-1-7-8

Witnesses

Sec. 8. At the hearing, the board or hearing officer may call witnesses in addition to those presented by the state or the licensee.

As added by Acts 1981, P.L.222, SEC.4.

IC 25-1-7-9

Disqualification of board member

Sec. 9. A board member is disqualified from any consideration of the case if the board member filed the complaint or participated in negotiations regarding the complaint. The board member is not disqualified from the board's final determination solely because the board member was the hearing officer or determined the complaint and the information pertaining to the complaint was current significant investigative information (as defined by IC 25-23.2-1-5 (repealed)).

As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.181-2002, SEC.1; P.L.1-2007, SEC.166.

IC 25-1-7-10

Confidentiality of complaints and information

Sec. 10. (a) Except as provided in section 3(b) of this chapter, all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:

(1) under law; or

(2) for the advancement of an investigation.

As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.181-2002, SEC.2; P.L.1-2007, SEC.167; P.L.149-2011, SEC.3; P.L.226-2011, SEC.19.

IC 25-1-7-11

Administrative orders and procedures

Sec. 11. Nothing in this chapter limits the rights of the licensee or

the state under IC 4-21.5.

As added by Acts 1981, P.L.222, SEC.4. Amended by P.L.7-1987, SEC.110.

IC 25-1-7-12

Reimbursement of attorney general

Sec. 12. (a) If:

(1) a fund is created by statute for the payment of an unpaid judgment against a licensee; and

(2) the office of the attorney general is required by statute to provide services to the boards that administer the funds described in subdivision (1);

the office of the attorney general is entitled to reimbursement for the costs incurred in providing the services described in subdivision (2).

(b) If:

(1) more than one (1) fund is established by statute for the payment of an unpaid judgment against a licensee; and

(2) the office of the attorney general is entitled to reimbursement under subsection (a);

the funds for reimbursement shall be taken in equal amounts from each of the funds described in subdivision (1).

As added by P.L.255-1987, SEC.1.

IC 25-1-7-13

Reports; contents

Sec. 13. The office of the attorney general shall submit to each board, at the request of the board, a report that includes the following information concerning that regulated occupation:

(1) The number of complaints filed.

(2) The number of cases currently under investigation.

(3) The number of cases closed.

(4) The number of cases resolved.

(5) The age of the complaints.

As added by P.L.177-1997, SEC.1.

IC 25-1-7-14

Cease and desist orders

Sec. 14. (a) Notwithstanding any other law, if the board of a regulated occupation believes that a person who is not licensed, certified, or registered under this title is engaged in or is believed to be engaged in activities for which a license, certification, or registration is required under this title, the board may do the following:

(1) File a complaint with the attorney general, who shall investigate and may file:

(A) with notice; or

(B) without notice, if the attorney general determines that the person is engaged in activities that may affect an individual's health or safety;

a motion for a cease and desist order with the appropriate board.

For purposes of this subdivision, the board may designate a board member or an employee of the Indiana professional licensing agency to act on behalf or in the name of the board.

(2) Upon review of the attorney general's motion for a cease and desist order, the board may issue an order requiring the affected person to show cause why the person should not be ordered to cease and desist from such activities. The show cause order must set forth a time and place for a hearing at which the affected person may appear and show cause as to why the person should not be subject to licensing, certification, or registration under this title. For purposes of this subdivision, the board may designate a board member to act on behalf or in the name of the board.

(b) If the board, after a hearing, determines that the activities in which the person is engaged are subject to licensing, certification, or registration under this title, the board may issue a cease and desist order that must describe the person and activities that are the subject of the order.

(c) A hearing conducted under this section must comply with the requirements under IC 4-21.5.

(d) A cease and desist order issued under this section is enforceable in the circuit or superior courts. A person who is enjoined under a cease and desist order and who violates the order shall be punished for contempt of court.

(e) A cease and desist order issued under this section does not relieve any person from prosecution under any other law.

(f) In addition to the powers specified in subsections (a) through (e), the state board of funeral and cemetery service may:

- (1) file complaints under subsection (a)(1);
- (2) issue show cause orders under subsection (a)(2); and
- (3) hold hearings and issue cease and desist orders under subsection (b);

in relation to persons who are engaged in or believed to be engaged in activities for which a certificate of authority is required under IC 30-2-13.

(g) Cease and desist orders may be issued by the state board of funeral and cemetery service under subsection (f) for failure to possess a certificate of authority even if the person has a valid:

- (1) funeral home license;
- (2) funeral director license;
- (3) embalmer license; or
- (4) cemetery registration.

(h) A cease and desist order issued under this section by a board defined in IC 25-1-11-1 may also include an order for the person to pay consumer restitution to a person who suffered damages as a result of the activities that were the basis for the cease and desist order.

(i) A cease and desist order issued under this section may also include an order for repayment of the costs of the proceedings. The person's ability to pay must be considered when costs are assessed.

These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.
- (11) Real estate review appraisals.

As added by P.L.84-2010, SEC.13. Amended by P.L.155-2011, SEC.9; P.L.134-2013, SEC.2.